

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH E. SWAN,	§	
	§	No. 604, 2006
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Kent County
	§	Cr. I.D. No. 0002004767
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 11, 2007

Decided: April 17, 2007

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 17<sup>th</sup> day of April, 2007, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Ralph E. Swan appeals from the Superior Court's denial of his motion for a new trial. He argues that Adam Norcross's recantation together with DNA results from a blood stain probably would change the result if he were granted a new trial.

2) At the time that he filed his motion for a new trial, Swan also filed a motion for post-conviction relief. The trial court had scheduled both motions to be heard together, but they were not. At the hearing on the motion for a new trial, the trial court only heard Norcross's new version of the facts and related evidence about

Norcross's credibility. No evidence was presented about the significance of the DNA results. That evidence is being considered by the trial court in connection with the still pending motion for post-conviction relief.

3) Because the DNA evidence may bear upon the motion for a new trial, we are remanding this matter with instructions that the trial court reconsider the motion after the parties have made an appropriate record of the DNA issue. If the DNA issue already has been presented in connection with the motion for post-conviction relief, the trial court need not conduct another hearing. Instead the trial court may reconsider this motion on the basis of the post-conviction motion record.

NOW, THEREFORE, IT IS ORDERED that the above-captioned matter be, and the same hereby is, REMANDED to the Superior Court for further action in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger  
Justice